

## PETITION UNDER 28 USC § 2254 FOR WRIT OF

## HABEAS CORPUS BY A PERSON IN STATE CUSTODY

AO 241 (Rev. 5/85)

<b>United States District Court</b>		District <b>MASSACHUSETTS</b>
Name <b>Michael Eller</b>	Prisoner No.	Case No. <b>BE02-028</b>
Place of Confinement <b>M.C.I. NORFOLK 2 CLARK ST. P.O. BOX 43 NORFOLK, MASSACHUSETTS 02056-0043</b>		
Name of Petitioner (include name under which convicted) <b>MICHAEL ELLER</b>		Name of Respondent (authorized person having custody of petitioner) <b>V. LUIS SPENCER</b>
<div style="font-size: 2em; font-weight: bold; margin: 0;">05-10740 DPW</div>		
The Attorney General of the State of: <b>MASSACHUSETTS</b>		
<b>PETITION</b>		
1. Name and location of court which entered the judgment of conviction under attack <u>Berkshire Superior Court</u>		
<u>Pittsfield, Massachusetts.</u>		
2. Date of judgment of conviction <u>March 6, 2003</u>		
3. Length of sentence <u>15-20 years concurrent with lesser sentences.</u>		
4. Nature of offense involved (all counts) <u>Possession and Trafficking of Cocaine, Heroin and possession of a firearm (handgun) in the commission of a felony. (see attached petition for details)</u>		
5. What was your plea? (Check one)		
(a) Not guilty <input checked="" type="checkbox"/>		
(b) Guilty <input type="checkbox"/>		
(c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:		
<u>Pled guilty to the second offender portions of counts, 2,3,4 and 8 contingent upon</u>		
<u>the outcome of suppression motion(s).</u>		
6. If you pleaded not guilty, what kind of trial did you have? (Check one)		
(a) Jury <input type="checkbox"/>		
(b) Judge only <input checked="" type="checkbox"/>		
7. Did you testify at the trial?		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction?		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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9. If you did appeal, answer the following:

- (a) Name of court \*\*When transcripts are made available, APPEALS COURT
- (b) Result N/A
- (c) Date of result and citation, if known N/A
- (d) Grounds raised Unknown at this time.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court N/A
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☒ Awaiting transcripts to proceed.

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_

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- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☐

(5) Result N/A

(6) Date of result \_\_\_\_\_

- (b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☐ N/A

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

- (c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

- (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

The purpose of this petition is to seek remedy for the Commonwealth's failure to provide the trial and Suppression hearing transcripts, so as to proceed with the demanded and much pursued appeal to the conviction and the underlying suppression hearing after 24 months of active pursuit.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Denial of Right to Appeal, In violation of the petitioner's Due

Process rights, guaranteed under the 14th. Amend. U.S. Const.

Supporting FACTS (state *briefly* without citing cases or law) On March 12, 2003, petitioner  
filed through counsel his Notice of Appeal, on March 18, 2003, petitioner through  
counsel obtained an "Order for trial transcripts. After multiple attempts to obtain  
said transcripts as well as those for the Suppression hearing, so as to proceed  
with his post-trial appeals. Petitioner has suffered oppressive incarceration,  
prejudice to his meritorious appeal, in violation of Supreme Court interpretation  
of the 14th. Const Amend. in, Barker v Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 2191

B. Ground two: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

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C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

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D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

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13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

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14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_

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(b) At arraignment and plea \_\_\_\_\_

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(c) At trial Bonnie G. Allen, 1145 Main St. Suite 215 Springfield, MA 01103

(d) At sentencing same as trial attorney.

(e) On appeal Steward T. Graham, Jr. 39 Burleigh Rd. Hampden, MA 1036

(no progress has been accomplished towards formation of the appellate briefs.)

(f) In any post-conviction proceeding NO

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

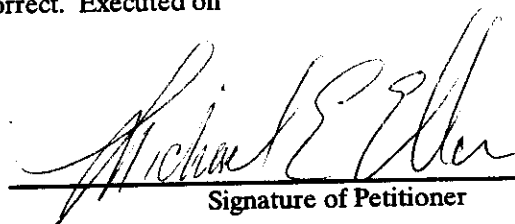
Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

April 5, 2005  
(date)

  
Signature of Petitioner